

48A C.J.S. Judges § 22

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

I. In General

C. Right and Title to Office; Determination of

§ 22. De facto judge

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  6, 12

A judge de facto is a judge de jure as to all parties except the State, and his or her right to hold office cannot be attacked in a collateral proceeding.

The doctrine of de facto officers extends to judges.¹ Thus, a de facto judge's acts are conclusive as to all parties² except the State,³ and as binding as though the judge had been a judge de jure,⁴ at least before the de facto judge is ousted from office.⁵

A de facto judge may be ousted by a direct proceeding,⁶ regularly instituted for that purpose,⁷ in the form provided by law,⁸ to which he or she is a party.⁹ His or her right to office generally cannot be attacked in a collateral proceeding¹⁰ except to the extent necessary to determine whether the judge is a usurper.¹¹ Thus, the title of a de facto judge cannot be determined in an action tried before such individual¹² or, generally, on an appeal.¹³ Such prohibition is applicable even though the person acting as judge is incapable of holding the office.¹⁴

No right to reassume the office.

Upon the resignation of a judge de facto from office, an actual vacancy, as well as a legal vacancy, exists in that office, and such judge has no right to reassume the office.¹⁵

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Footnotes

1 Tenn.—[Waters v. State ex rel. Schmutzer](#), 583 S.W.2d 756 (Tenn. 1979).

As to de facto officers, see [C.J.S., Officers and Public Employees §§ 457 to 467](#).

As to de facto judges, see § 9.

Effect of change of residence during term, resulting in failure to satisfy residency requirement

Md.—[Baker v. State](#), 377 Md. 567, 833 A.2d 1070 (2003).

2 Tex.—[Orix Capital Markets, LLC v. American Realty Trust, Inc.](#), 356 S.W.3d 748 (Tex. App. Dallas 2011), review denied, (Dec. 14, 2012).

City judge

A city judge was a de facto judge such that all his actions were valid.

Tenn.—[City of Johnson City v. Paduch](#), 224 S.W.3d 686 (Tenn. Ct. App. 2006).

3 Tex.—[Orix Capital Markets, LLC v. American Realty Trust, Inc.](#), 356 S.W.3d 748 (Tex. App. Dallas 2011), review denied, (Dec. 14, 2012).

4 Utah—[Pett v. Brigham City Corp.](#), 2010 UT App 394, 246 P.3d 758 (Utah Ct. App. 2010).

5 Tex.—[Rosell v. Central West Motor Stages, Inc.](#), 89 S.W.3d 643 (Tex. App. Dallas 2002).

6 N.C.—[In re Pittman](#), 151 N.C. App. 112, 564 S.E.2d 899 (2002).

7 N.C.—[In re Wingler](#), 231 N.C. 560, 58 S.E.2d 372 (1950).

As to the proper proceedings to determine the right to a judicial office, see § 21.

8 Miss.—[Crocker v. Sears, Roebuck & Co.](#), 346 So. 2d 921, 22 U.C.C. Rep. Serv. 349 (Miss. 1977).

9 N.C.—[In re Wingler](#), 231 N.C. 560, 58 S.E.2d 372 (1950).

10 Tex.—[Espinosa v. State](#), 115 S.W.3d 64 (Tex. App. San Antonio 2003).

Litigant's lack of standing

If a court or other office enjoys jurisdiction in a particular matter, a litigant in that matter has no standing to complain about an irregularity in the appointment of, or about an irregularity as to the qualifications of, a particular individual in the court or other office.

N.Y.—[People v. Ramos](#), 34 Misc. 3d 914, 935 N.Y.S.2d 871 (Sup 2012) (referring to the de facto officer doctrine).

11 N.C.—[In re Pittman](#), 151 N.C. App. 112, 564 S.E.2d 899 (2002).

12 Fla.—[Tobler v. Beckett](#), 297 So. 2d 59 (Fla. 2d DCA 1974).

13 Miss.—[Crocker v. Sears, Roebuck & Co.](#), 346 So. 2d 921, 22 U.C.C. Rep. Serv. 349 (Miss. 1977).

14 N.J.—[State v. Hill](#), 110 N.J. Super. 370, 265 A.2d 820 (App. Div. 1970).

15 N.C.—[People ex rel. Duncan v. Beach](#), 294 N.C. 713, 242 S.E.2d 796 (1978).

As to the resignation of office by a judge as terminating the term or tenure of such judge, see § 61.

As to the filling of vacancies in judicial offices, see §§ 79 to 83.

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